

## Office of Community Development Policy Bulletin # 9

**SUBJECT: Financial Assistance and Lien Requirements**

**EFFECTIVE DATE:** August 22, 2006

The purpose of this memo is to define the financial assistance and lien requirements for Office of Community Development (OCD) funded homeowner, homebuyer, rental rehabilitation, and rental development. These requirements include:

- 1 Minimum financial assistance limits
- 2 Maximum financial assistance limits
- 3 Lien requirements for homeowner, homebuyer, rental rehabilitation, rental development, and homeless assistance projects
- 4 Miscellaneous provisions

## FINANCIAL ASSISTANCE

### **Minimum Financial Assistance Limits**

Minimum financial assistance limits apply only to HOME funded projects. HOME regulations require a minimum HOME investment of \$1,000. Projects funded through other sources have no minimum investment limit.

### **Maximum Financial Assistance Limits**

## Homeowner Rehabilitation or Replacement Housing

The maximum OCD assistance for a homeowner rehabilitation or replacement housing project is \$25,000. However additional costs up to \$10,000 specifically attributable to lead based paint hazard reduction or abatement can increase the OCD investment to a maximum of \$35,000.



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## Homebuyer

Homebuyer Purchase with Rehabilitation (HPR; homebuyer assistance with moderate rehabilitation.) The HPR program includes up to \$10,000 for down payment assistance and closing costs, plus up to \$20,000 for rehabilitation costs, plus costs specifically attributable to lead-based paint hazard reduction or abatement (see below), plus eligible developer fee.

Acquisition Development and Resale (ADR; acquisition of real estate with rehabilitation or new construction for resale). OCD can finance the full amount of the project cost up to the HOME maximum subsidy limit (**Attachment A, HOME Maximum Subsidy**) for the development of the project. However, higher preference is given to Grantee Applications for HRF funding who have construction financing to leverage with the OCD funds requested for the project. The maximum net subsidy (subsidy in the project at completion) is \$60,000, plus costs specifically attributable to lead-based paint hazard reduction or abatement (see below), plus eligible developer fee. The maximum net subsidy is \$30,000 for properties located in HOME Participating Jurisdictions (PJ). **Note:** PJs are municipalities that have their own HOME funding directly from HUD.

**Note:** The maximum assistance to the homebuyer is outlined below in the section on Lien Requirements.

## Lead-Based Paint Hazard Reduction

HRF-funded homebuyer projects allow up to \$10,000 additional rehabilitation costs in excess of the above limits for costs specifically attributable to lead-based paint hazard reduction.

## County Allocation Programs only

Down Payment Assistance (DPA) only. Generally, OCD does not award funding for DPA only. (Refer to PB#16 for further clarification.) In areas where MSHDA's Links to Homeownership Program is not available, counties with CDBG allocations may offer DPA assistance up to \$10,000, with \$5,000 forgivable after five years and the balance deferred until sale or title transfer of the property. Funds provided can include a portion of the down payment required, prepaid expenses, reasonable closing costs, and a principal reduction payment to meet the lender's underwriting criteria.

## Rental Rehabilitation

### If HOME-Assisted:

- The minimum OCD assistance is \$1,000 per unit.
- The maximum OCD assistance for a rental rehabilitation project is \$14,999 per unit. However additional costs up to \$10,000 specifically attributable to lead-based paint hazard reduction or abatement can increase the allowable rehabilitation costs up to \$24,999.
- In NPP or downtown revitalization areas, MSHDA may approve a maximum OCD assistance of \$25,000 per unit, with an additional \$10,000 available for lead based paint hard reduction or abatement. However, the HOME affordability period will be 10 years instead of 5.
- There is no maximum number of units allowed, but OCD encourages projects with 11 or fewer units.

### If CDBG or MSHDA Assisted:

- No minimum OCD assistance per unit requirement.
- The maximum OCD assistance is \$14,999 per unit. However additional costs up to \$10,000 specifically attributable to lead-based paint hazard reduction or abatement can increase the allowable rehabilitation costs up to \$24,999.
- If the rental rehabilitation project is in an **NPP or a Downtown Revitalization area**, the maximum OCD assistance is \$25,000 per unit, with an additional \$10,000 available for lead-based paint hazard reduction or abatement.
- There is no maximum number of units allowed, but OCD encourages projects with 11 or fewer units.

## Rental Development

For a rental development project, the maximum amount of assistance will be:

- Within a PJ, the lesser of the equity gap as determined by MSHDA or \$30,000 times the total number of HOME designated units in the project. For special needs housing, the maximum assistance will be the lesser of the equity gap as determined by MSHDA or \$40,000 per designated unit.
- Outside a PJ, the lesser of the equity gap as determined by MSHDA, the total development cost of the HOME designated units, or \$40,000 times the total number of HOME designated units in the project.
- Additional costs up to \$10,000 per unit specifically attributable to lead based paint hazard reduction or abatement is allowed.
- The maximum total development cost must be reasonable as determined by MSHDA.

## LIEN REQUIREMENTS

### Homeowner Rehabilitation

- Requires at a minimum a 100% deferred lien when the total OCD assistance for hard costs exceeds \$5,000. However, costs specifically attributable to lead based paint hazard reduction or abatement does not need to be subject to a lien.
- If the total amount of OCD assistance for a project does not exceed \$2,500, no lien is required on the property. If the total OCD assistance is **greater than \$2,500, but not exceeding \$5,000**, the OCD investment must be secured by a lien. The lien can be forgiven over five years if there was a dollar for dollar leverage in the project.

### County Allocation Programs only

#### Forgivable loans instead of deferred loans can be selected by counties

After July 1, 2006, counties may choose to offer all homeowner rehabilitation (over \$2,500) assistance as a forgivable loan. The terms of forgiveness would be limited to the following:

- Years 0-5, No Forgiveness (lien is deferred)
- Years 6-15, Loan is forgiven by 10 percent per year (or 1/120 per month) until totally forgiven at the end of year 15.

#### Changes in a County's lien policy must be approved by the County Board of Commissioners

Prior to changing the local lien policy, the county governing board must approve these changes through a board resolution at a public meeting. MSHDA will require that County grantees certify their informed approval of such a policy change by acknowledging that having forgivable instead of deferred repayable loans will result in the county both serving fewer households and a reduction in administrative funds available to the program because less program income would be received by the county. In order for the lien terms to take effect, the signed resolution and revised program guidelines must be submitted to the Office of Community Development at least 30 days prior to the proposed effective date (**see Sample Resolution - Attachment C to this policy**)

At a minimum, the resolution (a) must include the specified language, but it may include any other language in support of these changes that are deemed locally appropriate, and (b) specify an effective date. *Only loans closed after the effective date may be covered by a changed lien policy.* If the Office of Community Development does not act to reject or require modifications within 15 days of receipt of the resolution and program guidelines, the new local lien policy may go into effect. Please submit these requests to your Community Development Specialist.

## Local Amortized Loans Through County Allocation Programs

County Grantees that receive a HOME or CDBG allocation of funds may elect to loan funds to homeowners and require the funds be paid back with regular installments (monthly, bi-monthly, quarterly). The Grantee can charge a reasonable interest rate, but not to exceed the current market rate. The loan must be a fixed rate and term. A Grantee cannot offer an adjustable rate or require that the homeowner pay a higher interest rate or payment during the loan term. The grantee can suspend or defer interest payment for hardship cases. However, all loan requirements must be in the Grantee's Program Guidelines and disclosed to applicant at time of application.

### Homebuyer

The lien requirement for homebuyer assistance is based on the **homebuyer subsidy**. A **homebuyer subsidy** is the amount of public funds (HOME or CDBG) provided which enables a family to buy a home.

The homebuyer subsidy is limited to the public funds used to cover:

- The difference between the market value of the property at the time of sale and the homebuyer's investment (i.e., the amount of the first mortgage plus the homebuyer's down payment); and,
- Closing costs, prepaid escrows, and tax prorations.

**The maximum** homebuyer subsidy for Acquisition-Development-Resale (ADR) projects is \$30,000. The following loan/lien requirements apply to homebuyer subsidies:

- The homebuyer subsidy will be secured by a deferred lien which is due on sale or when the buyer no longer occupies the home as his/her primary place of residence.
- When the CDBG/HOME assistance is in the form of a development subsidy, that subsidy would not be subject to a lien, and is immediately forgiven. (The development subsidy is the amount of public funds provided to a project, which exceeds the after rehab or construction value of the project.)
- **Note:** In the Homebuyer Purchase Rehabilitation (HPR) program, an after rehabilitation appraisal is required to determine if there was a development subsidy in the project. If there is no after rehabilitation appraisal, all homebuyer assistance would be in the form of a deferred loan. However, costs specifically attributable to lead based paint hazard reduction or abatement up to \$10,000 are not subject to a lien.

## **Rental Rehabilitation**

### If HOME-assisted:

- A five-year affordability period (lien) is required for projects not exceeding the \$14,999 per unit assistance limit.
- A ten-year affordability period (lien) is required projects providing between \$15,000-35,000 per unit assistance.
- All rehabilitation costs including costs attributable to lead base paint hazard reduction or abatement, or landscaping must be included in the affordability period (lien). Additionally, soft costs such as inspections, work specifications and other soft costs charged to the project must be added to the lien and counted when calculating the affordability period.
- Repayment of HOME-assistance for noncompliance does not remove affordability requirements for the remaining lien period.

### If CDBG or MSHDA-assisted:

- A five-year affordability period (lien) is required.
- All rehabilitation costs including costs attributable to lead base paint hazard reduction or abatement, or landscaping must be included in the lien. Additionally, soft costs such as inspections, work specifications and other soft costs charged to the project must be added to the lien.
- In the event of sale, should a new owner agree to continue to abide by the terms of the CDBG or MSHDA-assistance for the remainder of the affordability period, repayment of the CDBG or MSHDA-assistance would not be required. Otherwise, repayment would be required.

## **Rental Development:**

The minimum lien requirement and length of time that income and tenancy restrictions apply to multifamily or supportive housing development of 1-24 units are as follows:

\$1,000 - \$14,999	5 years
\$15,000 - \$39,999	10 years
\$40,000 and up	15 years
New Construction	20 years

## **MISCELLANEOUS PROVISIONS**

### **Land Contracts For Homeowner Rehabilitation Projects.**

An enforceable lien would require the signatures of all parties with a legal interest in the property. The CDBG/HOME applicant(s) and all Land Contract holder(s) in the chain of title must sign the lien agreement. Only the borrower(s) would sign the mortgage note.

An alternative to the Land Contract Seller(s) signing the lien agreement would be for them to sign a Land Contract Subordination Agreement. This document would be recorded and would give the Grantee a superior lien position to the Land Contract Seller(s). A sample agreement is attached to this policy (**Attachment B, Land Contract Subordination Agreement**).

### **Life Estates.**

The person granted the life estate must sign the lien, and the remainder (the person(s) who would receive the property upon the death of the occupant) must also sign the lien. Income for eligibility does not include the income of the remainder person.

### **Liens with Multiple Funding Sources**

County Allocation Liens. Counties with allocation funding from MSHDA OCD can put a single lien on a project funded from various funding sources (including OCD HOME or CDBG). MSHDA recommends that counties have a blanket Memorandum of Understanding with funding sources for county projects about how liens will be handled. MSHDA does not intend to regulate how counties handle or track the interests of the funders, including our funds granted under a county allocation. The county must recognize that allowing priority of interest to other funders may reduce the county's program income.

MSHDA Housing Resource Fund. When MSHDA Housing Resource Funds (HRF) are involved. MSHDA would be the Mortgagee. In these cases, MSHDA requires that we be the sole funder relative to the MSHDA lien. Other funding sources in the project would need to have separate liens.

## **Subordination of Liens**

MSHDA discourages the subordination of liens resulting from OCD funded projects. If subordination is allowed locally, we prefer that it be allowed only for refinancing of existing debt from mortgages for rate and/or term improvement. This type of subordination is allowed and does not require MSHDA approval, because no new debt is being incurred.

Subordination of a lien where new debt is being incurred will be allowed by MSHDA only for OCD funded homeowner rehabilitation projects, and only if the following criteria are met:

- A local policy and review process must be established to approve subordination requests. This policy and process must be approved by the legal counsel of the Grantee.
- Eligible and ineligible purposes for subordination must be outlined in the Grantee's policy.
- The local policy must be approved by MSHDA prior to policy implementation.
- A copy of each lien subordination approval letter must be kept in the project file and available for review by MSHDA.
- The total amount of all liens against the property (including the lien resulting from MSHDA OCD funding) cannot exceed 80% of the value of the property based on a current appraisal.
- The household must have income at or below 80% of AMI.
- A minimum of one year must have expired since the MSHDA OCD assistance was received.
- The interest rate for the new loan and associated loan costs must be competitive with the lowest rates and costs available in the lending industry. A worksheet evaluating current loan rates and costs must be part of the approval process.
- The proceeds of the loan the Grantee is subordinating to, must be disbursed by the lender for the approved purposes of the loan. Grantee must keep copies of disbursement checks in project file.

The local plan for subordination of liens can be more restrictive than the above guidelines allow. The plan must be submitted to the Grantee's CD Specialist at MSHDA for approval.



## **Assumption of Liens**

Liens can be assumed by income-eligible heirs who will occupy the residence as their year round residence with approval by the Grantee and MSHDA.

## **Lien Forgiveness**

Part (or all) of the CDBG or HOME funds due at the time the property is sold may be forgiven with MSHDA prior approval, if the proceeds from the sale are insufficient to pay all superior liens and the CDBG/HOME lien.

Remember, all liens must be recorded at the applicable Registrar of Deeds office. If you have questions, contact your CD Specialist.

### **Attachments:**

PB #09 Financial Assistance Lien Req, A, HOME Maximum Limits, 08.10.05

PB #09 Financial Assistance Lien Req, B, Land Contract Subordination Agmt, 05.02.02